

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CACR07-766

MICHAEL SMITH

FEBRUARY 20, 2008

	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR-06-3956]
v.		
STATE OF ARKANSAS		
	APPELLEE	HONORABLE JOHN W. LANGSTON, CIRCUIT JUDGE

AFFIRMED

A jury in Pulaski County Circuit Court convicted appellant Michael Smith of first-degree battery and sentenced him to ten years' imprisonment in the Arkansas Department of Correction. His sole argument on appeal is that the trial court erred in denying his motion for a directed verdict because the State offered insufficient proof that the victim suffered serious physical injury. We affirm.

A motion for a directed verdict or dismissal is a challenge to the sufficiency of the evidence. *Green v. State*, 79 Ark. App. 297, 87 S.W.3d 814 (2002). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Killian v. State*, 60 Ark. App. 127, 959 S.W.2d 432 (1998). Evidence is substantial when it is forceful enough to compel a conclusion and goes beyond mere speculation or conjecture. *Britt v. State*, 334 Ark. 142, 974 S.W.2d 436 (1998). The jury is the sole judge of the credibility of the

witnesses and the weight to be given their testimony. *Burns v. State*, 323 Ark. 206, 913 S.W.2d 789 (1996).

In pertinent part, Arkansas Code Annotated section 5-13-201(a)(1) (Repl. 2006) provides that a person commits first-degree battery if, “with the purpose of causing serious physical injury to another person, he or she causes serious physical injury to any person by means of a deadly weapon.” The sole issue in this case is whether the State proved that appellant inflicted “serious physical injury” on the victim. In our criminal code, “serious physical injury” is defined as an injury that “creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(19) (Repl. 2006). Expert medical testimony is not required to prove serious physical injury, as the finder of fact may use its common knowledge to determine whether such injury occurred. *Johnson v. State*, 26 Ark. App. 286, 764 S.W.2d 621 (1989). Similarly, it is not necessary that the impairment be permanent, but merely “protracted.” *See Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003) (holding that an injury resulted in a “protracted” loss of mobility where the victim was unable to walk upon arrival at the emergency room, was still unable to walk at the time of her release from the hospital several days later, and required a course of physical therapy to prevent her injuries from resulting in a permanent loss of mobility).

Appellant argues that the injuries to the victim did not constitute serious physical injury and that Dr. Tullis’s medical opinion was “speculative and [did] not rise to the level of substantial evidence.” We disagree.

At trial, Joann Dickerson testified that her son Edward was sleeping on the sofa in her bedroom when appellant entered the bedroom, grabbed a small wooden table, and began beating him

in the head. After appellant hit Edward eight or nine times in the face and head, Edward did not fight back or move, and he appeared unconscious. Joann was lying on the bed next to the sofa when the incident occurred. She began screaming for Kennisha (another resident of the household) to call 911. She testified that, before the incident, Edward did not have any problems with communication or movement, nor did he have any “mental problems.”

Officer Gorbet testified that he responded to the 911 call. He arrived at the home and found the victim lying on the sofa in the bedroom. He described him as unable to “talk or say anything.” He was bleeding heavily from the head area. The sofa was “covered in blood,” and there was a small wooden table, with one leg broken off, laying on the sofa. Witnesses gave Officer Gorbet a description of appellant, including his age and a description of his clothing, which Officer Gorbet broadcasted to other officers in the area. Officer Cumming testified that, while looking for the suspect, he saw appellant walking down the street. Appellant matched the description of the suspect, and Officer Cumming took him into custody. Officer Cumming identified appellant in court as the person he took into custody that day.

Edward testified that he did not remember anything about the incident; he only remembered waking up in the hospital. He testified that he was hospitalized from August 26 until he was released in November. He went to rehabilitation after he left the hospital, and he stated that he was still seeing a doctor about his injuries. Neurosurgeon Jason Tullis, the physician who treated Edward the night of the incident, also testified that Edward was still “somewhat under [his] care.” He described Edward’s injury as “traumatic brain injury” with an initial Glasgow Coma score of 8-T, which indicated that he had a severe brain injury and was intubated. Edward also suffered from skull fractures, particularly in the temporal bone and femoid bone, and Dr. Tullis was concerned that

he had damage to the carotid artery. He suffered multiple facial fractures, congenial hemorrhaging, and mild proptosis of the left eye.

Because Edward suffered from severe traumatic brain injury, immediately after arriving at the emergency room he underwent a procedure for placement of an inner cerebral pressure monitor and placement of an arterial line to monitor his blood pressure directly from the artery. Dr. Tullis explained that this procedure was necessary because of the swelling of the brain after traumatic injury. He stated that secondary injury, involving brain swelling, can be fatal or significantly interfere with the body's ability to recover from the injury. He described Edward's injuries as "serious and life-threatening" and was "concerned about him actually dying when [he] was treating him or before [he] treated him." His concern was based on the fact that patients, with severe head injury, such as Edward, can experience high inner cranial pressures that lead to brain death. Moreover, Edward had a blood clot next to the left temporal lobe that was associated with a high likelihood of death. After Edwards awoke from anesthesia and recovered to the point that he could be evaluated, he was able to receive words and understand them, but unable to generate speech. Dr. Tullis testified that these symptoms were consistent with his injury.

Although Edward survived the initial trauma, Edward's degree of injury was severe, and Dr. Tullis suspected that he would have some form of impairment. As of the day of trial, Dr. Tullis opined that Edward suffered from a "prolonged impairment" and stated that he "still significantly suffering from the injuries and disability he received." He stated that, "[i]t seem[ed] very unlikely that he [would] make a full recovery." However, Dr. Tullis explained that it was impossible for him to fully determine until at least one year had passed if Edward would have any permanent disability from the injuries.

Appellant claimed that on August 26, Edward acted in a disrespectful manner towards appellant's father. Appellant became angry about Edward's behavior and left the house. When appellant returned, he found Edward in the bedroom. A discussion about Edward's disrespectful treatment towards appellant's father led to an altercation between the two of them. Appellant testified that Edward stood up and indicated that he was going to hit appellant. In an attempt to defend himself, appellant then hit Edward. At one point, Edward hit him and he fell back onto the wooden table, breaking the leg. He then picked up the table and struck Edward once with it. After the altercation ended, appellant left the room and did not look back at Edward.

Appellant's argument that Edward's injuries did not constitute serious physical injury is unpersuasive. In comparison to other cases where our supreme court has found that a serious physical injury occurred, the injuries in this case were as serious, if not more serious, than in other cases. For instance, in *Tarentino v. State*, 302 Ark. 55, 786 S.W.2d 584 (1990), serious physical injury was found when the victim suffered a fractured skull, spent thirteen and one half days in the hospital, and remained under the care of a doctor for some time, after being hit in the head while sleeping with a baseball bat. A serious physical injury was found to have occurred in *Henderson v. State*, 291 Ark. 138, 722 S.W.2d 842 (1987), where the victim was shot once in the right knee and once in the left foot. She was hospitalized for one day and night and missed one month of work. *Henderson, supra*. Serious physical injury was also found in *Lum v. State*, 281 Ark. 495, 665 S.W.2d 265 (1984), where after being struck three times with a fist, appellant suffered three fractures in her face, had impaired vision, and suffered a loss of feeling in part of her face. *Lum, supra*. In *Harmon v. State*, 260 Ark. 665, 543 S.W.2d 43 (1976), serious physical injury was also found when the victim suffered a broken leg, fractured toe, and a bruised heel and pelvis, was hospitalized for a month and was still on crutches at the time of the trial. *Id.*

Moreover, appellant's argument that Dr. Tullis's medical opinion was "speculative" is also unpersuasive. While Dr. Tullis acknowledged that it was impossible for him to know for certain if Edward would have any permanent disability from the injuries, he testified that as of the day of trial, Edward suffered from a "prolonged impairment" and was "still significantly suffering from the injuries and disability he received." He further opined that it was unlikely that he would make a full recovery. Whether a victim has suffered serious physical injury is an issue for the jury to decide. *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999) (citing *Purifoy v. State*, 307 Ark. 482, 822 S.W.2d 374 (1991)). Based on the evidence presented in this case, the jury could conclude that a serious physical injury occurred. Accordingly, we affirm.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.